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ABSTRACT

This paper is the seventh in a biennial series summarizing state and federal public policy issues affecting higher education. The purpose is to provide board members and other higher education officials with brief descriptions of the most important public policy issues. In one way or another, most of the public policy issues cited in this paper are affected by uncertain fiscal policies. The outcome of federal and state tax policy debates will directly affect the capacities of colleges and universities to sustain their public mission, including are: (1) homeland security; (2) affirmative action; (3) deteriorating economic and fiscal environment; (4) surging numbers of diverse students; (5) rapid tuition increases; (6) reauthorization of the Higher Education Act; (7) federal tax policy; (8) assessment and accountability; (9) scientific research; and (10) intercollegiate athletics. Each issue is defined, with both a brief summary and a more detailed discussion. (SLD)

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Ten Public Policy Issues for Higher Education in 2003 and 2004

Association of Governing Boards

No 03-02

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PUBLIC POLICY PAPER SERIES

AGB

No. 03-02

TEN PUBLIC POLICY ISSUES FOR HIGHER EDUCATION IN 2003 AND 2004

This paper is the seventh in AGB's biennial series summarizing federal and state public-policy issues affecting higher education, and it arrives in the midst of what may be the most tumultuous times in our lives for the nation and the academy. Budget crunches, war in Iraq, homeland security demands, soaring enrollments—a near "perfect storm" of challenges—demand new advocacy efforts from trustees.

It isn't that the policy challenges of past decades were less vexing or consequential than those of today. Indeed, many issues remain unresolved even as new ones emerge. What is different now, in addition to the anxieties all of us feel, is that the tax structures of our states are outdated and no longer meet the needs of our citizens. This realization is not new. For many years, our economy has been moving away from manufacturing toward provision of services, information, and e-commerce that lie largely outside the taxing authorities. Such changes today take on greater urgency because needs are intensifying, and no one has articulated a promising solution to the revenue shortages in the states.

What's worse, emerging demographic realities will place even greater demands on state governments and public and private colleges and universities. Our aging population will require more services, and the rising numbers of young citizens at or below the poverty level will seek access to higher education and more financial aid. Will the money be there? Absent a major restructuring of state tax structures very soon, this decade (and probably the next one) will bring the greatest fiscal challenges in memory.

In one way or another, most of the public-policy issues cited in this paper are affected by uncertain fiscal policies. The outcome of federal and state tax-policy debates will directly affect the capacities of colleges and universities to sustain their public missions. It is essential to our nation that both the independent and public sectors of higher education maintain vitality, competitiveness, and their contributions to the public good.

The appropriate response, therefore, is greater advocacy by trustees and governing boards. Higher education needs much more of it—now—trustee by trustee, board by board, institution by institution.

1. **Homeland Security**
   Colleges and universities must implement three new costly and complex federal laws designed to increase homeland security.
2. **Affirmative Action**
   The Supreme Court is expected to resolve the legality of affirmative action in admissions, student aid, and faculty hiring.
3. **Deteriorating Economic and Fiscal Environment**
   The federal and state governments face a daunting economic and fiscal situation, with discouraging prospects for higher education funding.
4. **Surging Numbers of Diverse Students**
   Colleges and universities must address the educational and financial needs of a new generation of college students.
5. **Rapid Tuition Increases**
   Declining state appropriations have forced public colleges and universities to raise tuition at unprecedented rates, with more hikes on the horizon.
6. **Reauthorization of the Higher Education Act**
   Congress must reauthorize the law that regulates federal student-aid programs, among other things. Changes to this legislation will affect who receives federal student aid and how much.
7. **Federal Tax Policy**
   Federal tax policies designed to stimulate the economy have sharply divided Congress and the nation.
8. **Assessment and Accountability**
   The federal and state governments want institutions to prove their educational results and are devising stringent tests to hold institutions accountable.
9. **Scientific Research**
   The scientific community faces challenges in the areas of maintaining balanced federal investments across all scientific disciplines, procedures for bringing research results to market, the ethics of cloning and stem-cell research, and the protection of human research subjects.
10. **Intercollegiate Athletics**
    As the public embraces college sports as entertainment, colleges and universities continue to confront issues of control, finances, and equity.

Trustee influence at the state and federal levels can be very powerful if it is coordinated and executed strategically.

The nation's 50,000 college and university trustees and the 40,000 directors of foundation boards affiliated with public colleges and universities should be at the center of public-policy debates. They should become effective advocates for enlightened, intelligent, balanced, and realistic policies that help restore the social contract between government and higher education, between government and the people it serves at all income levels. The notion of this social contract, however romantic or abstract it may seem to be, has been eroding for many years. The scales now clearly tilt toward the assumption that a college degree is primarily an individual benefit rather than a public good.

Ideally, all governing boards should conduct themselves in apolitical, nonpartisan ways to serve their broad public trust. But a key distinction should be made. It is one thing for a board member or governing board to act in politically partisan ways on narrow issues that reflect the particular ideological position of a political party or movement. It is quite another for inspired boards to answer the need for advocacy with government leaders on matters affecting the long-term health of the institutions they are sworn to hold in trust for future generations.

What's more, trustees and regents have a duty to interpret the long-term needs not just of their own institution but of higher education as a whole. Surely we trustees can distinguish between our personal values and belief systems and those required of us as advocates for higher education's special place in our diverse and complex society.

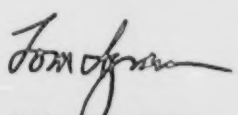
Historically, the academy's leaders have not encouraged trustee or governing board advocacy, and many board members are uncomfortable speaking out. But this is shortsighted in these challenging times.

Which leads me to an immodest proposal. I encourage you, using this paper as a springboard, to consider devoting time at your next few board meetings to discuss how each of the ten issues affects your college or university. It may be possible for boards and chief executives to reach a consensual strategy to make their collective views known to state and/or federal policymakers, using the following questions as a guide:

- Which of the ten issues in this paper most directly affect the future of our enterprise? For which of these can we agree on a course of action that makes sense? Who will take responsibility on the board's behalf, and with what strategy?
- Are there other pressing public-policy developments that bear directly on our organization's future?
- Are our state's elected leaders exploring new tax structures that better reflect today's and tomorrow's economic realities? If not, how can we help bring this about?
- Can we express support on a public-policy issue affecting the *other* (public or independent) sector of higher education in our state to demonstrate that our citizens benefit enormously from academic institutions that are healthy and responsive to their needs in *both* sectors?

Meanwhile, I'm confident that reading this paper will be time well spent. AGB would like to thank the **Lumina Foundation for Education** for a generous grant that funded, in part, development of the paper. Thanks also to the following students of public policy and higher education who contributed to it: **Terry W. Hartle**, senior vice president for government and public affairs of the American Council on Education; **David L. Warren**, president, and **Karin L. Johns**, director of tax policy and state liaison, of the National Association of Independent Colleges and Universities; **Martin Michaelson**, attorney, Hogan & Hartson; **Richard J. Turman**, director of federal relations, and **Tobin L. Smith**, senior federal relations officer, of the Association of American Universities; **Jane V. Wellman**, senior associate of the Institute for Higher Education Policy; and AGB staff members **Richard Novak**, vice president for public sector programs; **Neal Johnson**, deputy executive director of the Center for Public Higher Education Trusteeship and Governance; **Daniel J. Levin**, vice president for publications; and **Charles S. Clark**, senior editor.

They join with me in expressing our collective hope that this paper will be useful in the search for common ground and a common action agenda with your colleagues. There is much at stake for higher education and the nation.



Richard T. Ingram
AGB President, April 2003

1. Homeland Security

Issue At a Glance

Colleges and universities must implement three new costly and complex federal laws designed to increase homeland security.

- The USA Patriot Act increases the authority of law-enforcement agencies to combat terrorism through surveillance and information gathering.
- The Border Security Act imposes new responsibilities on higher education institutions for foreign students, scholars, and other guest workers.
- The Bioterrorism Preparedness and Response Act strengthens federal oversight of biohazardous materials.
- In addition, Department of Homeland Security regulations now require colleges and universities to compile data on all international students, scholars, and exchange visitors.

It is difficult to overstate the challenges that will accompany the effort to implement these new regulations and laws. The three laws were enacted quickly; they are very complicated; they impose costly new responsibilities; and the regulations intended to guide their implementation are still being finalized. In addition, the administrative authority for overseeing some of these laws was transferred to the new Department of Homeland Security (DHS) as of March 2003, meaning that a whole new set of administrative officials is now in charge.

Colleges and universities are not, of course, the only organizations coping with new federal requirements in the wake of the September 11 terrorist attacks. Nonetheless, the scope and cost of implementing three such complicated laws will pose an especially serious challenge to campus officials. A huge number of campus officials will be affected: registrars, business officers, research administrators, environmental health and safety officers, foreign student advisers, and even individual faculty members. Every campus, no matter how small, will feel the changes. The implications of a mistake are serious: When a senior professor at one public university violated provisions of the Bioterrorism Act regarding the destruction of biohazardous materials, he was promptly arrested and jailed.

More generally, the new laws will pose a philosophical challenge for colleges. Openness and freedom have long been the hallmarks of American higher education. Yet the new laws emphasize accountability, record keeping, and federal controls in areas where few or none previously existed. It is not that academic freedom has become a less important value; it is that another important value now must be given equal, or even greater, attention.

• The USA Patriot Act increases the authority of law-enforcement agencies to combat terrorism through surveillance and information gathering.

The USA Patriot Act, enacted just six weeks after the September 11 terrorist attacks, dramatically enhanced the power of law enforcement to combat terrorism through surveillance and other information-gathering techniques. Colleges and universities, as providers of communications services such as telephones, computers, and Internet access, are directly affected. Among other things, the law grants the FBI powers to investigate and combat terrorism through surveillance, computer-related searches and seizures, electronic evidence gathering, and voluntary disclosure of information by institutions. The broad sweep of this law means all colleges and universities may be asked to disclose information that, in an earlier time, would have been kept confidential.

Consider just some of the new surveillance procedures that may affect campuses. Under the Patriot Act, stored voice-mail messages less than six months old may be seized with a search warrant rather than a wiretap order. Government officials have the authority to install devices on computers to intercept and collect information on the Internet, including devices to obtain dialing, routing, addressing, or signaling information. Any electronic-service providers—for example, a college that offers telephone or Internet access—may be subpoenaed to disclose basic subscriber information such as local and long-distance telephone-connection records, records of session times and durations, and means and source of payment. In addition, the FBI may require any entity to release "any tangible things" to aid law-enforcement agencies that would help

protect against terrorism or clandestine intelligence activities, and the FBI prohibits anyone from disclosing that the agency has sought or obtained these records. A long-standing federal law that protects student privacy—the Family Educational Rights and Privacy Act—also has been modified to permit the disclosure of education records.

In short, this complex law gives government agencies significant new authority to collect information. Perhaps more than any of the other legislation enacted to combat terrorism, the Patriot Act will affect campus registrars, foreign student advisers, general counsels, and information technology officials.

- **The Border Security Act imposes new responsibilities on higher education institutions for foreign students, scholars, and other guest workers.**

The federal government long ago limited what foreign students may study or researchers may investigate. This is appropriate and desirable. It is difficult, for example, to limit nuclear proliferation if we do not limit access to Ph.D. programs in nuclear engineering. In the past, examinations of visa applications were informal, and the federal government is now in the process of developing a more systematic approach.

Under the Interagency Program to Advance Science and Security (IPASS), the federal government plans to create an interagency task force composed of every federal science agency and every federal security agency to review visa applications in cases when the State Department requests assistance. Consular affairs officials who have concerns about a specific applicant will refer the visa applications to the IPASS panel. As of March 2003, standards to be used in making decisions and the opportunities for the scientific community to interact with the panel were undetermined. It may be that the biggest impact of the panel will be on scientists who seek access to specialized knowledge and/or highly specialized equipment rather than on undergraduate students. But with details of the system undisclosed, nobody knows for sure what IPASS will require, the burden it will impose, or the effect it will have.

- **The Bioterrorism Preparedness and Response Act strengthens federal oversight of biohazardous materials.**

For several years, the federal government has sought to limit access to a small number of hazardous materials (called "select agents") used in some scientific laboratories. In fact, the list of regulated materials is short, and the items on it—such as smallpox, the plague, ebola and anthrax—are truly dangerous. In response to the fall 2001 anthrax attacks, Congress enacted the Public Health Security and Bioterrorism Preparedness and Response Act, which expanded current requirements and imposed detailed new standards affecting the acquisition, use, possession, transfer, and destruction of select agents. The law is specific and will give several federal agencies increased authority over what goes on in scientific laboratories, including those on college campuses.

The new bioterrorism law's requirements are appropriate, but it illustrates some of the most salient features of the overall domestic-security regime now challenging higher education. The demands are complex, and compliance will be costly. Because the law deals with new issues, its requirements will change frequently. Its detailed provisions will increase the interaction that campus officials have with federal policymakers and bureaucrats. Unfortunately, mistakes will be made and penalties imposed for violations, whether deliberate or inadvertent. The consequences of a violation for any reason are likely to bring a great deal of unwelcome publicity to any institution involved.

- **In addition, Department of Homeland Security regulations now require colleges and universities to compile data on all international students, scholars, and exchange visitors.**

Concern that some of the September 11 terrorists entered the United States under false pretenses led Congress to take aggressive steps to tighten the requirements on all visas to visit this country. Student visas—which have been a source of concern for a decade—were of particular interest. Some of the new restrictions represent an expansion of existing requirements. Shortly after the terrorist attacks, for example, the State Department issued new regulations requiring more extensive background checks for males from certain countries. More recently, individuals from some countries who already are in the United States have been required to register with federal officials.

The most notable development with respect to foreign students and international scholars is the rushed implementation of a new information technology system designed to provide better monitoring of foreigners visiting the United States. The Student and Exchange Visitor Information System (SEVIS) will link all institutions of higher education with every State Department embassy or consulate abroad and with every immigration-controlled port of entry in the United States. If a foreign citizen is admitted to study at an American college, he or she must be entered into the SEVIS database by the school the student plans to attend. State Department officials will issue a student (or exchange visitor) visa only if the individual is included in the database as required. If the foreign student enters the United States, DHS officials will modify the database to alert the college to expect the student within 30 days. After enrollment, colleges must notify the DHS immediately if a student does anything that may affect his or her student status—for example, changes majors, moves, marries, takes a job, graduates, or drops out of school. If necessary, DHS officials will be able to investigate more extensively.

School officials—especially foreign student advisers, business officers, and registrars—face huge technical and operational challenges to make SEVIS work. The challenges will vary from campus to campus depending on the number of foreign students enrolled, where the students come from, and the nature of the campus information technology system. And some issues—such as the long-term financing of the system—have not yet been addressed.

Questions for Boards

- Has your institution allocated adequate resources to ensure proper compliance with the new foreign-student reporting requirements?
- Are officials on your campus well versed in their responsibilities and rights in responding to the government's new surveillance powers?
- Have your institution's academic departments adjusted to new limitations on what security-sensitive subjects foreign students and scholars may participate in?
- Are scientific researchers on your campus sufficiently prepared to comply with new safeguards on work related to hazardous substances?

2. Affirmative Action

Issue At a Glance

The Supreme Court is expected to resolve the legality of affirmative action in admissions, student aid, and faculty hiring.

- Lower courts are divided over whether colleges and universities may consider race and ethnicity in student admissions.
- Regardless of the Supreme Court's decisions in two cases involving the University of Michigan, independent as well as public institutions are likely to be affected.
- The Michigan decisions also may affect education institutions' consideration of race and ethnicity in student financial aid and in faculty employment decisions.
- The Michigan decisions are unlikely to prescribe an exact template for race and ethnicity-conscious decision making; thoughtful interpretation probably will be required.

In two cases involving affirmative action in student admissions at the University of Michigan—*Grutter v. Bollinger* (involving law school admissions) and *Gratz v. Bollinger* (involving undergraduate admissions)—the Supreme Court is expected to decide by June whether colleges and universities may consider race in admissions to achieve a diverse student body.

The justices are likely to revisit the 1978 *Bakke* case, in which a splintered court struck down racial set-asides in admissions at the University of California-Davis Medical School. That ruling also paved the way for selective colleges and universities to consider applicants' race and ethnicity as a "plus" factor in efforts to promote student-body diversity. Until it agreed to review the Michigan cases, the high court had not addressed the issue directly or clearly since *Bakke*. However, recent lower court rulings are starkly divided over the legality of affirmative action

in admissions, faculty employment decisions, and student financial aid.

Extensive precedents hold that affirmative action is lawful when "narrowly tailored" to remedy ongoing vestiges of past racial discrimination, such as official segregation. Nationally, however, most of the selective higher education institutions that pursue affirmative action in admissions base their programs on considerations of student diversity, not remediation of past discrimination. Courts disagree as to whether the educational interest in student diversity justifies race-conscious and ethnicity-conscious decisions—a question the Supreme Court is now expected to tackle.

- **Lower courts are divided over whether colleges and universities may consider race and ethnicity in student admissions.**

In the two Michigan cases, as well as a case addressing race-conscious admissions at the University of Washington, the lower courts ruled that an applicant's race may be taken into account to admit a diverse student body. Those decisions rejected challenges by unsuccessful white applicants who claimed that less qualified minority applicants were admitted and that race consciousness to advance student diversity amounts to unlawful discrimination. These decisions conflict with the 1996 *Hopwood* ruling, in which the federal Fifth Circuit appeals court struck down as *per se* unconstitutional race-conscious admissions at the University of Texas. And the Michigan lower court decisions also diverge from an Eleventh Circuit appeals court ruling that the University of Georgia's admissions process was not "narrowly tailored" to achieve diversity.

Although the facts and precise legal contexts in the several cases differ, the two Michigan cases and the Washington and Texas cases (*Gratz v. Bollinger, Grutter v. Bollinger, Smith v. University of Washington,* and *Hopwood v. Texas*) share concern with these underlying questions: Does federal law categorically forbid higher education institutions to consider applicants' race and ethnicity to promote diversity? Will the *Bakke* principle continue to govern admissions? Does student-body diversity confer significant educational benefits? Is promotion of student diversity a "compelling governmental interest" that permits the "narrowly tailored" consideration of race and ethnicity? The Supreme Court will now consider some or all of these issues.

- **Regardless of the Supreme Court's decisions in two cases involving the University of Michigan, independent as well as public institutions are likely to be affected.**

How the court will rule in the Michigan cases is unpredictable, but if recent decisions on race-consciousness in governmental decision making are a guide, the court's pronouncement may produce less clarity than either affirmative-action proponents or opponents seek. The court could, for example, decline to decide whether diversity can be a compelling interest and instead hinge its decision on whether the Michigan policies are narrowly tailored.

If the court addresses directly whether diversity can be a predicate for race-consciousness in admissions, it may uphold one or both of the Michigan policies, or it may strike down those policies but suggest that a more narrowly tailored consideration of race and ethnicity would be permissible. The university's undergraduate admissions program takes race into account in two ways the lower court held lawful: (1) Underrepresented minority applicants may receive a point bonus on their selection index score (points also can be added for geographic factors, an alumni relationship, and other considerations), and (2) applications of minorities and others with qualities or characteristics deemed valuable and who meet academic standards may be "flagged" for further consideration.

The law school does not use a point system but admits students who contribute to racial, ethnic, and other types of diversity deemed educationally valuable, even if they have test scores and grade-point averages lower than those of other students; it seeks to enroll a "critical mass" of underrepresented minorities.

If the court is sufficiently divided, differences between the two policies could yield a compromise decision that upholds one and strikes down the other. The court also could rule, as did the Fifth Circuit in *Hopwood*, that diversity can never be a compelling interest that justifies race-conscious action.

Because the same legal standard for race-conscious decisions has been held to apply under Title VI of the 1964 Civil Rights Act as under the Constitution's Equal Protection Clause, the court's decision is likely to apply to independent colleges and universities that receive federal funding as well as to public institutions.

- **The Michigan decisions also may affect education institutions' consideration of race and ethnicity in student financial aid and in faculty employment decisions.**

In a 1994 case that involved student financial aid, the Fourth Circuit appeals court declared the University of Maryland's Banneker Scholarships unlawful because only African Americans were eligible (*Podberesky v. Kirwan*). That court found that the university failed to prove that the scholarships helped remedy the university's history of discrimination. The U.S. Department of Education holds that institutions may take race and ethnicity into account in student-aid decisions if the programs are narrowly tailored to achieve student diversity or remedy past institutional discrimination.

Lower courts also are divided over affirmative action in pursuit of faculty diversity. In 1997, the Third Circuit appeals court held that a New Jersey high school's decision to dismiss a white teacher in order to retain the only African-American teacher in its business department violated Title VII of the 1964 Civil Rights Act (*Taxman v. Board of Education*). The Supreme Court agreed to review the case, but civil-rights groups, to avoid a potentially adverse high court ruling, settled it outside of court. In another 1997 decision (*University and Community College System v. Farmer*), the Nevada Supreme Court upheld an affirmative-action plan under which public colleges received funding for an extra faculty position if they hired a minority faculty member.

The Michigan decisions are unlikely to prescribe an exact template for race and ethnicity-conscious decision making; thoughtful interpretation probably will be required.

Even if the Supreme Court issues landmark rulings in the Michigan cases, in all probability a number of lower courts will be asked to interpret the court's statement of legal principle in the particular circumstances that apply at various institutions. Policies in some states may forbid what the U.S. Constitution and federal laws otherwise permit; for example, voter initiatives in California and Washington and a law in Florida bar public institutions there from giving "preferences" based on race or ethnicity. Regents, trustees, administrators, faculty members, students, and others in higher education can be expected to keep a watchful eye on affirmative-action developments in the courts, in state legislatures, in the news media, and on campuses.

Thus, continued ferment almost certainly lies ahead on affirmative action. Comprehensive resolution of its many knotty issues does not seem imminent.

Questions for Boards

- How important is racial and ethnic diversity to your institution's mission?
- Have your institution's admissions procedures recently been reviewed to ensure that they pass legal muster?
- Does your institution have sufficient outreach programs to attract underrepresented minority applicants?

3. Deteriorating Economic and Fiscal Environment

Issue At a Glance

The federal and state governments face a daunting economic and fiscal situation, with discouraging prospects for higher education funding.

- Adequate federal support for education and research is unlikely to be sustained because of an enlarging federal deficit and a shift in federal priorities toward national defense and homeland security.
- The worst fiscal crisis in the states in a half century means colleges and universities will face painful and difficult choices.
- The reduced profits of corporations and the declining investment portfolios of wealthy donors and grant-making foundations will continue to dampen the outlook for significant college and university fund-raising.

The rapid shift in our national economic circumstance from budget surpluses and optimism to budget deficits and pessimism has prompted some economists and policymakers to call the situation a "perfect storm." Colliding to create the storm was the September 11 terrorist attack on America; the dot-com collapse; rapidly rising health-care costs (particularly in Medicaid); and sharply reduced capital gains, corporate income, and other tax collections. Projections for economic recovery are continually pushed farther into the future, creating increased unease and uncertainty.

The budget numbers circulating in statehouses and on Capitol Hill reflect the economic downturn that is suppressing tax collections and public spending. In addition, the reduced profits of corporations and corporate foundations and the declining investment portfolios of grant-making foundations and wealthy individual donors have put a damper on college and university fund-raising. Colleges and universities have come to rely upon such support for special initiatives or to offset reductions in government spending. Lowered investor confidence also has led to declines in the endowment portfolios of colleges and universities.

Many educators and policymakers believe that the money disappearing as a result of this economic downturn will not be replenished. By design or default, a fundamental shift in the public financing of public higher education is occurring.

- **Adequate federal support for education and research is unlikely to be sustained because of an enlarging federal deficit and a shift in federal priorities toward national defense and homeland security.**

Although federal funding for Pell Grants and research sponsored by the National Institutes of Health and the National Science Foundation have increased in recent years, it is unlikely that these levels will be sustained. The federal deficit, intense homeland security and defense demands, and the Bush Administration's proposal for additional tax cuts mean federal higher education programs probably will not be funded beyond current levels for the foreseeable future.

President Bush's $2.2 trillion budget for fiscal 2004, which begins October 1, 2003, contains a projected federal deficit of $304 billion. Prewar estimates of the conflict with Iraq and the immediate postwar costs for occupation and rebuilding were estimated at more than $100 billion and could push the deficit to higher than $400 billion. Contained in the budget are significant increases for defense and homeland security. Some in Congress are skeptical about the president's proposed tax-cut package. A debate can expected over whether tax cuts will spur economic growth and enhance tax revenues or exacerbate the federal deficit.

The 2004 budget proposes level funding for student aid and education grant programs; funding for some programs is eliminated. The proposed increases in education spending are targeted for implementation of the No Child Left Behind law and special education. Federal research fares better in the president's budget proposal, but much of the increases focus on homeland security and bioterrorism.

- **The worst fiscal crisis in the states in a half century means colleges and universities will face painful and difficult choices.**

The National Governors Association has called the current situation the worst fiscal crisis in the states since the end of World War II. Added to the states' woes are structural problems in mandated spending programs and tax systems that are in dire need of reform. These problems magnify the effects of the economic downturn by encouraging large and rapid health-care cost increases and by failing to capture tax revenues for an economy based more on provision of services than on manufacturing.

Thirty-seven states were forced to reduce their fiscal 2002 budgets by a cumulative $12.2 billion, according to the National Association of State Budget Officers. So far in fiscal 2003, states have cut an additional $30 billion. In fiscal 2004, the shortfall is projected to be $82 billion. Because 49 of the 50 states must balance their yearly budgets, some states may raise taxes. Nearly all states have reduced spending, and many will make further mid-year cuts that are both immediate and substantial; 29 already have done so in 2003.

Higher education is absorbing the largest share of these reductions. The percentage of state revenues for higher education operating costs and state student aid will decline; tuitions in many states will continue to rise (the average increase was 10 percent this year); and classes will be more crowded and less available. Boards and senior administrators will face painful choices in considering layoffs and salaries for faculty and staff and as they reprioritize and restructure academic programs.

- **The reduced profits of corporations and the declining investment portfolios of wealthy donors and grant-making foundations will continue to dampen the outlook for significant college and university fund-raising.**

Seeing the decline in government appropriations, many colleges and universities will work even harder to obtain gifts from donors, corporations, and foundations. A bearish stock market, however, will make this very difficult. The portfolios of college endowments have declined, as have the prospects for future fund-raising from individual donors, and most especially from corporations and foundations.

Volatile markets may force institutions and university foundations either to increase payout rates to ensure that existing university programs and operations are funded at adequate levels or to reduce payout rates to protect the endowment corpus. Because of such trends, many institutions are exploring nontraditional approaches to philanthropy. Today's "venture philanthropists," a new breed of younger donor who seeks more control and faster results from his or her gift, has spawned new thinking.

Questions for Boards

- Has your board's investment committee adequately modified its strategies to reflect the gloomier outlook for the stock market?
- Has your institution sufficiently altered its operating budget to reflect the decline in federal and state funding?
- Have your institution's endowment managers and development officers considered new approaches to fund-raising such as "venture philanthropy?"

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4. Surging Numbers of Diverse Students

Issue At a Glance

Colleges and universities must address the educational and financial needs of a new generation of college students.

- The college-going population is growing larger and increasingly diverse.
- Many students are academically underprepared and dependent on financial aid—at a time when states and institutions are challenged to meet the demand for remediation and student aid.

Colleges and universities will need to devote attention and resources to meet the academic, financial, and socioeconomic needs of a growing and very different new generation of college students. The growth represents the largest increase since the post-World-War-II boom. But the fiscal environment is very different now, and this is a different type of college student than we've seen before.

- **The college-going population is growing larger and increasingly diverse.**

By 2015, the number of undergraduates nationwide will have grown by 19 percent from 1995—from 13.4 million to about 16 million—according to a recent study by Educational Testing Service (ETS). Many of these new students are of traditional college age, but a growing number are adults upgrading their skills. Most striking is that 80 percent of these 2.6 million new students will be minorities—African Americans, Hispanics, and Asian/Pacific Islanders.

According to ETS, the increase in African-American undergraduates will be relatively modest—from 12.8 percent of students in 1995 to 13.2 percent in 2015. Asians on campus will grow from 5.4 percent to 8.4 percent of all students. Hispanic students also will increase dramatically, from 10.6 percent of 1995 undergraduates to 15.4 percent in 2015. Over the same period, the share of white undergraduates is expected to fall by 7.8 percentage points.

In addition, the proportion of high school students from first-generation immigrant families is rising across the country. This fact alone underscores the increased importance of early outreach and college recruitment efforts to ensure that these students finish high school academically prepared to succeed in college.

The good news is that the seemingly overwhelming problems associated with past low levels of immigrant education are becoming surmountable, according to a new report from the Pew Hispanic Center, "The Improving Educational Profile of Latino Immigrants." Comparing the educational attainment of native-born Americans of any race or ethnicity with that of Hispanic foreign-born adults from 1970 to 2000, the report reveals "a narrowing gap in the percentage of adults who complete high school" as well as prospects that gaps in college-going rates are unlikely to grow.

Still, the number of families with children in poverty is increasing nationwide, and this population is disproportionately represented among new immigrant families who hope to send their children to college. The result: even more pressure on financial-aid programs to serve economically disadvantaged families—and on institutions to redouble efforts to educate faculty and academic support staff to meet the educational needs of these students.

- **Many students are academically underprepared and dependent on financial aid—at a time when states and institutions are challenged to meet the demand for remediation and student aid.**

Clearly, the challenges don't begin when students apply for admission and aid—nor do the problems end once students get in. The sad truth is that students in many states still miss out on the opportunity to take rigorous high school courses that would help prepare them for college. In most states, only about half of high school freshmen complete high school within four years and then enroll in college, according to a report from the National Center for Public Policy and Higher Education.

The news on college affordability is worse. Although 11 states recently have pumped money into financial aid and tamed tuition increases, recession-driven tuition hikes and financial-aid cuts in other states over the past year have placed college affordability squarely on the public agenda.

In 2002, state support for colleges and universities remained essentially flat in most states—and dropped in 14 states. At the same time, tuition and fees rose in every state and by double digits in 16 states. Mid-year budget cuts and tuition increases have jolted revenue-starved institutions from California to New York. Now more than ever, governing board members and state policymakers have a crucial responsibility to establish institutional policies for tuition and financial aid that find the right balance among quality, equity, and competition.

In spite of their best efforts, states' red ink will continue to flow even after the national economy stabilizes. State revenues were down for more than a year after the last recession ended in 1991, and states continued to cut their budgets for another 18 months.

Armed with these grim truths, higher education leaders must open a fresh dialogue with legislators who will be asked to weigh the value of their state's colleges and universities against many competing demands, some of which—from health care to homeland security—will have life-and-death implications for many citizens.

Questions for Boards

- Has your institutional research office updated its assessment of the evolving demographic picture in your institution's service area?
- Have your institution's academic and student-affairs offices revised their planning and programming to reflect these changes?
- Have your financial-aid policies and remedial academic programs been reviewed in anticipation of the expanding needs of underprepared students?

5. Rapid Tuition Increases

Issue At a Glance

Declining state appropriations have forced public colleges and universities to raise tuition at unprecedented rates, with more hikes on the horizon.

- Less money from the states combined with unprecedented enrollment demands have created a double whammy for most institutions: pressure to cut costs while expanding capacity.
- The trend in most states is for a continued incremental shift away from public revenues to institutional funding based on tuition and philanthropy.
- The seeming inevitability of tuition increases is causing some states to think about a basic change in finance policies, perhaps moving to voucher systems and channeling state subsidies into need-based aid.

American higher education faces an unprecedented challenge over the next decade: to accommodate more students on a lower public revenue base. The task will be particularly daunting in public institutions in the Sunbelt and coastal states, where population increases are steepest.

• Less money from the states combined with unprecedented enrollment demands have created a double whammy for most institutions: pressure to cut costs while expanding capacity.

Public revenues for higher education are stagnant or declining. To protect access and maintain quality, institutions are raising tuition. Nationwide, the average tuition in 2002 for a public four-year institution climbed to about $4,000 a year—a 38 percent increase since 1992. Charges will go up even more in 2003-04 because of the continued drain on state revenues from the unexpectedly protracted economic slump. More than 16 states have raised tuition by more than 10 percent in the last year alone.

Public tuition trends show a zigzag pattern: Tuition rises when state funds are cut and holds steady (or even declines) when funds increase. One of the biggest reasons for tuition increases in the past decade is that the overall share of state spending for higher education has declined, despite nominal increases from year to year.

• The trend in most states is for a continued incremental shift away from public revenues to institutional funding based on tuition and philanthropy.

Tuition revenue pays for only a portion of the cost of public higher education, which is subsidized only partially by state tax dollars. At the start of the 1990s, tuition accounted for about 20 percent of revenues for public institutions; that share has risen to more than 30 percent.

But looking at tuition share masks important differences among subsets of the public higher education sector in total costs and subsidy patterns. For instance, in 1998 nationwide, spending in public research universities averaged $22,000 per student. About 40 percent (around $8,600) came from state subsidies, while the remainder came from tuition (24 percent) and other sources. Much of the spending in public research universities goes to pay for activities other than instruction, so these numbers do not translate to what is spent on the direct cost of instruction. The state per-student subsidy was about $5,300 per student in public comprehensive institutions and just above $5,000 in public community colleges. There are large differences between states in these numbers, but the broad pattern of higher per-student subsidies in the public research universities reflects national norms.

• The seeming inevitability of tuition increases is causing some states to think about a basic change in finance policies, perhaps moving to voucher systems and channeling state subsidies into need-based aid.

Higher education's funding troubles are not likely to end when economic growth returns. Almost every state faces long-term budget problems caused by structural imbalances between revenues and expenditures. Spending demands for several major categories of state activity—health care, K-12 schools, and corrections (as well as higher education)—are increasing faster than overall state revenues. Unless general-purpose revenues from taxes are increased or spending is

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seriously reduced, something has to give. Because higher education has the ability to charge tuition, it is a prime candidate for revenue cuts; state policymakers know that institutions can capture new funds from tuition increases.

But many states are starting to worry about the long-term workability of such zigzag patterns of finance for higher education, given the likely harm to access and quality. They also can see the writing on the wall and know that a return to the days of generous public funding will not happen absent changes in state revenue structures.

Officials are beginning to discuss fundamental changes in historic patterns of finance, including different types of tuition policies. Three approaches are common in the discussions: (1) "differential pricing," (2) moving to a "high tuition/high aid" model, and (3) deregulating tuition in some sectors. To some extent, these are variations on a theme, but there are differences among them in the equation of who pays and who benefits from the policy.

Differential pricing policies means that students pay different tuition rates depending on the costs of their programs. Public higher education has always had a modest amount of differential pricing: Out-of-state students pay full costs; graduate students typically pay higher tuition than undergraduates; and students in laboratory-based disciplines pay fees for the costs of equipment and access to the labs. Yet most undergraduate students pay a flat rate for tuition, regardless of their major.

In a differential pricing policy, tuition rates would be based more on the cost of the programs. Students in science classes would pay more than those in the humanities, for example. Students in the arts also would pay more, because of the studio costs. Differential pricing also could extend to price discounts for students enrolling in high-priority programs, such as teacher education or nursing.

The "high tuition/high aid" model has been advanced by many economists over the years. They argue that high public subsidies are an inefficient and inequitable way to fund higher education because the funds go to students who probably would attend college anyway. They prefer a funding model that encourages competition between public and private institutions, while targeting public subsidies to the financially neediest students. To accomplish this, students are charged tuition more aligned with the full cost of their programs, and public subsidies are maintained to pay for financial aid to needy students.

In this scenario, tuition would increase the most in the research universities to replace the higher level of state subsidies associated with the more expensive research programs. Yet tuition also would go up sharply in comprehensive and community colleges. Independent institutions almost certainly would benefit from a move to a high tuition/high aid policy, because the price gap between their institutions and the public ones would begin to disappear.

A less draconian alternative is *tuition deregulation*. This would allow prices to be set by the institution rather than controlled by the state. In this model, institutions would be forced to make the decisions about where to set their prices in relation to cost and market. The model recognizes that public institutions operate in varying markets—regional, national, or local—and differ according to the family income levels of students. In a deregulated tuition scenario, state subsidies would be maintained, but tuition would be allowed to rise differentially on top of the state subsidy, depending on an institution's market and the ability of its students to pay the higher costs.

The choice among different types of policies will depend on how much revenue the states need and the higher education markets within them. Differential pricing probably nets the least in new revenue, and across-the-board high tuition/high aid the most. High tuition/high aid is least likely to hurt enrollments in academically selective institutions that serve economically advantaged students. But any strategy for raising tuition risks curtailing access to price-sensitive low-income students.

To protect access and quality, states will have to look at their policies for institutional subsidies along with tuition and aid. This means looking at historic policies for subsidizing research as well as instruction and raises issues of equity between the sectors.

Any move to different types of tuition policies presents painful choices for state and institutional policymakers. The difficult question will be finding alternatives that continue to meet state policy goals of access, quality, and economic development. There won't be easy solutions.

Questions for Boards

- Has your board worked with administrators to consider new strategies for determining tuition rates?
- Has your board worked with administrators to update financial-aid policies in response to reduced federal and state funds and higher tuitions?
- Has your board worked with administrators to rethink the balance of how operating funds are balanced between academic research and instruction?

6. Reauthorization of the Higher Education Act

Issue At a Glance

Congress must reauthorize the law that regulates federal student-aid programs, among other things. Changes to this legislation will affect who receives federal student aid and how much.

- Increasing the college participation rates of low-income students and improving the terms of student loans are likely to be central issues.
- Extensive federal regulations and paperwork requirements are burdensome to many colleges and universities, but easing these regulations will be difficult.
- The Bush Administration and some in Congress want to focus on "accountability" and "consumer information." Federal action could undermine the long-standing academic autonomy of colleges and universities.

All federal student-aid programs must be reviewed and reauthorized every six years. After the Bush Administration and the higher education community submit ideas and recommendations to Congress, the House and Senate prepare and vote on respective bills. The competing efforts are then reconciled into a single measure that is sent to the president for his approval. This long and complicated process is unlikely to be completed before fall 2004.

This reauthorization comes at a troubling time: America is fighting terrorism and a war with Iraq. Moreover, a stumbling economy and federal budget deficits will give policymakers little leeway to expand existing programs, even as spiraling public-sector tuition leads to demands for more aid.

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- **Increasing the college participation rates of low-income students and improving the terms of student loans are likely to be central issues.**

The complex array of federal grant, loan, and work-study programs provides almost $60 billion a year to help families finance their children's education. Nearly 75 percent of full-time students receive federal student aid, as do almost 40 percent of part-time students. Many of these individuals would not be able to finance their education without this assistance. Therefore, the implications of reauthorization for students, and for the schools that educate them, are enormous.

The reauthorization is likely to raise multiple issues, ranging from broad policy considerations of widespread concern to highly technical matters of narrow interest. Two areas stand out:

Increasing the participation rates of low-income students. In the past 30 years, federal student-aid programs have helped millions of low-income students attend college. But the participation rates of such students relative to upper income students have not changed significantly during that period.

There are three explanations for the continued difference in participation between income groups: Low-income students are not, on average, as well prepared academically as their more fortunate peers; they lack information about the importance of higher education and the availability of student aid; and by definition they lack the financial resources to enroll.

Congress will face a serious challenge in finding ways to direct more resources to low-income students. A number of suggestions—creation of a national advertising campaign designed to provide clear, easily accessible information through the popular media about the availability of federal student aid, for example—will be carefully reviewed. But it ultimately comes down to providing adequate amounts of money. Congress and the administration will have to find ways to increase grant support for low-income students without diminishing the modest amount of money available for middle-income families.

Like it or not (and most higher education officials do not), federal student loans have become absolutely critical to the financing of higher education. Initially created as a loan of convenience for middle-income families, federal education loans now are used by almost all low-income students. In general, federal loans are a good deal; the interest rates and repayment terms are far more favorable than education loans from commercial lenders. But as loans become more common, so do concerns that students are borrowing too much money and that they leave school too deeply in debt.

One central issue in this reauthorization is whether loan limits ought to be increased to let students borrow more money. The limits were last increased in 1992 (1986 in the case of first-year students), while the cost of living and the price of college meantime have increased considerably. The next reauthorization will not conclude before 2010. Letting students borrow more money would better position current and future students to cover these higher fees. But if students have the opportunity to borrow more money, they surely will. This, of course, will only deepen levels of indebtedness. How Congress balances these competing concerns will be a central issue in this reauthorization.

Improving the terms and conditions of student loans. All borrowers must pay an up-front fee before they can receive a student loan. The amount of the fee varies somewhat, but in the same way that a home mortgage may include "points," all borrowers face a fee. It is little more than a tax on borrowing for college that is imposed on low-income students. Nearly everyone agrees eliminating it should be a high priority. But doing so will increase the cost of the federal program to taxpayers, a fact that may doom the idea in the current budget climate.

- **Extensive federal regulations and paperwork requirements are burdensome to many colleges and universities, but easing these regulations will be difficult.**

Colleges and universities that participate in the federal student-aid programs face an enormous regulatory burden imposed by the Department of Education. The cost of these regulations is, of course, passed on to consumers in the form of higher tuition, and the burden of compliance diverts the efforts and energy of campus officials. In 2002, Rep. Howard "Buck" McKeon (R-Calif.) solicited recommendations for reducing federal regulations and received more than 3,000 ideas and recommendations. These proposals will be carefully reviewed, and some are likely to find their way into law.

But reducing excessive regulation is more difficult than it should be. Most of the federal regulations colleges face are the result of some provision in the Higher Education Act designed to accomplish a specific purpose. Some advocacy groups bitterly oppose any changes to regulations. For example, many colleges chafe at the highly detailed and ever-expanding federal regulations on reporting campus crime. But efforts to streamline or simplify the regulations are met with charges that campuses will be less safe or that students will lack information to protect themselves.

While there is widespread agreement with the general proposition that colleges are regulated too heavily, it is hard to find specific steps that can be taken to provide significant regulatory relief without offending some vocal constituency.

- **The Bush Administration and some in Congress want to focus on "accountability" and "consumer information." Federal action could undermine the long-standing academic autonomy of colleges and universities.**

The Bush Administration has said it wants to increase the "accountability" of colleges and universities, but no one knows what this really means. Higher education institutions already are highly accountable—to accrediting agencies, state governments, and to the federal government. Some observers believe the real goal is to provide consumers with additional and better information to make decisions about which college to attend. But in light of the voluminous information on colleges available in commercial guidebooks, it is not clear what additional consumer information is necessary and desirable.

One central concern is that any new "accountability" measures may not work equally well for all colleges and universities because of the enormous diversity within higher education. Even an indicator as seemingly simple as a graduation rate presents technical and philosophical challenges if it is applied to all schools without recognizing the differences in student bodies and institutional missions.

Openness and transparency are enduring American values, and various new federal "accountability" mandates for corporations, elementary and secondary schools, and nursing homes have reinforced their desirability. Extending similar mandates to colleges remains a key issue in the coming reauthorization.

Questions for Boards

- Has your institution reviewed student-aid needs for current and prospective students in light of a struggling economy and declining federal and state funds?
- Have administrators on your campus identified federal and state regulations that are overly burdensome and perhaps unnecessary?
- Has your academic affairs committee worked with faculty to explore ways of meeting new accountability demands by measuring student learning outcomes?

7. Federal Tax Policy

Issue At a Glance

Federal tax policies designed to stimulate the economy have sharply divided Congress and the nation.

- Legislation making the estate-tax repeal permanent has taken a back seat to economic stimulus proposals.
- The Senate is considering legislation that would encourage charitable giving to colleges and universities.
- The boom in tax-preferred college savings plans could result in less pressure for institutions to provide student aid.
- The nonprofit community is taking a closer look at legislation on internal governance resulting from passage of the Sarbanes-Oxley Act.

Debate over the effects of the $1.35 trillion tax bill enacted in 2001 continues to dominate the political landscape. The president staunchly defends the tax relief and is moving forward with a second tax-cut package he says will boost the economy. Public and congressional support for tax-cut legislation, in light of the costs of war in Iraq, appears to be wavering, but the situation remains fluid.

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Lawmakers' perceptions about the 2001 tax cut's effects on the economy will largely determine the scope of any additional tax-relief bills over the next couple of years. Many blame the $1.35 trillion tax package for directly causing the current budget deficit and woeful economic conditions. Others, including the president, aggressively defend the package and advocate further tax relief. The White House maintains that the near-term deficit, which the Office of Management and Budget estimates at $307 billion in fiscal 2004, was caused by the drop in federal revenue resulting from the stock market collapse, the recession, and the need to finance the continuing war on terrorism.

- **Efforts to make estate-tax relief permanent have taken a back seat to economic stimulus proposals.**

As states struggle to fill their own budget gaps, prospects for making permanent the temporary federal estate-tax repeal enacted in 2001 have dimmed. Facing high unemployment and increasing demands for services, states also have lost a share of federal estate-tax revenue over the past year. To help them, President Bush has proposed $3.6 billion for state assistance as part of his economic stimulus package. While the Bush package is silent on the estate tax, there is still significant support in Congress for permanent estate-tax repeal. A bill might be considered, but it's unlikely to clear both chambers of Congress.

- **The Senate is considering legislation that would encourage charitable giving to colleges and universities.**

One of the first bills to move swiftly in the Senate this session was a package of charitable-giving incentives strongly backed by the White House. The CARE Act of 2003 contains a provision known as the IRA charitable rollover. This would allow individuals with excess funds in various retirement vehicles to donate a portion of those funds to a charity (including colleges and universities) without current tax penalties. This most likely would greatly increase alumni gifts to higher education institutions. Obstacles remain, however, including controversial "faith based" provisions. Enactment of the bill is still a long way off, even though it remains a Bush priority.

- **The boom in tax-preferred college savings plans could result in less pressure for institutions to provide student aid.**

Often lost in the ongoing debate over the 2001 tax bill are several provisions that increase opportunities for students and families to save for college tax-free. In particular, college-savings plans and prepaid tuition plans—also known as section 529 plans from their location in the Internal Revenue Code—have skyrocketed in popularity. These plans allow individuals to save for college, and thanks to the 2001 tax bill, withdraw funds tax free. Just a few years ago, only six states had section 529 plans. Because of the tax relief provided in the 2001 bill and the subsequent increase in demand, every state now offers one.

While students and families obviously benefit from saving for college, there is an enormous potential benefit for institutions as well. It is too early for hard data, but if more students enter college with more cash on hand, this may relieve some pressure on institutions to provide financial aid. Because the plans are relatively new, it will be quite some time before this cohort of students starts college. When the time comes, it will be interesting to watch the effect on the need for student financial aid.

- **The nonprofit community is taking a closer look at legislation on internal governance resulting from passage of the Sarbanes-Oxley Act.**

The Sarbanes-Oxley Act was passed in summer 2002, largely in response to the Enron and Worldcom corporate accounting scandals. This legislation and the corporate governance rules subsequently proposed by the New York Stock Exchange set new standards for corporate accountability in public companies. While the new requirements currently do not apply to nonprofit organizations, some people believe colleges and universities should consider adopting some of these new rules to enhance internal governance and institutional accountability.

The Senate Finance Committee and the Internal Revenue Service have signaled a strong interest in increased disclosure from nonprofits, and many financial advisers are already suggesting that nonprofits review their codes of conduct in light of Sarbanes-Oxley. Some colleges and universities have started to use the new law as a blueprint and are carefully studying their financial disclosure and conflict-of-interest policies to ensure that they closely mirror the Sarbanes-Oxley requirements, just in case the new law is eventually expanded to include them.

Questions for Boards

- Has your institution's development office sufficiently prepared staff and prospective donors for coming changes in federal and state estate-tax laws?
- If a law were passed that allowed tax-free contributions to charities from donors with excess retirement funds, would your institution expect a boom in alumni contributions?
- How important will it be for colleges and universities to revisit their internal governance practices in light of the Sarbanes-Oxley law?

8. Assessment and Accountability

Issue At a Glance

The federal and state governments want institutions to prove their educational results and are devising stringent tests to hold institutions accountable.

- The tradition of self-regulation in higher education is under fire, as institutions are pressured to account publicly for various aspects of institutional performance.
- Federal and state officials are devising new mechanisms to assess college and university effectiveness, through different types of report cards and accountability measures.
- With the heightened interest in assessment and accountability, the traditional system of voluntary accreditation faces a stern challenge.

Attitudes among legislators and many in the business community continue to reflect a belief that colleges and universities have gotten a free pass on proving their value as recipients of taxpayer dollars. Passage in 2001 of the federal No Child Left Behind Act, which enforces new standards for quality in elementary and secondary education, whetted appetites for something similar at the postsecondary level.

• The tradition of self-regulation in higher education is under fire, as institutions are pressured to account publicly for various aspects of institutional performance.

Respect for self-regulation in higher education continues to erode. This represents a significant change because higher education has long treated student-learning assessment as a private matter under the control of the faculty rather than a measure for public accountability.

Quality control historically has been self-regulated, with clearly delineated faculty and governing board responsibilities. Internal institutional reviews are validated through accreditation, the process of external peer review of institutional quality designed to ensure that public standards appropriate to the particular institution are met. The measures for quality have historically been institutional and process measures: admissions standards, faculty credentials, governing board structure, size of the library, finances, and internal processes for ensuring quality.

All of this is being turned on its head in the current environment, with its shift of interest away from measures of institutions and processes to measures of the products of higher education—student learning and contributions to economic activity.

Trendiness aside, there are many additional reasons for the need for better measures of learning outcomes in higher education:

First and most important is the continued "massification" of higher education, caused by the economic pressure that is forcing more students to college to prepare them to find jobs. Thirty years ago, most of higher education used student admissions standards for quality control on student learning; this no longer works in the majority of institutions.

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The second cause is student mobility within higher education. Students now assemble their degrees through courses taken at more than one institution. This means that institutional curriculum standards are less relevant as mechanisms for quality control. And many students never do attain a degree, moving into the workforce after completing just a few courses, which means that measures other than degree attainment are needed.

Third, employers want to know how higher education will address what they perceive as a skill deficit in too many of their recent recruits. They want to see higher education address knowledge and skills that transcend things learned from particular courses: basic cross-functional skills and attributes, including leadership, teamwork, problem-solving, and communications skills.

- **Federal and state officials are devising new mechanisms to assess college and university effectiveness, through different types of report cards and accountability measures.**

Almost every state now has some kind of public-accountability or report-card system for higher education. These include both traditional institutional measures as well as attempts to measure student-learning outcomes.

Despite the strong interest in student learning, the consensus to date has been that existing assessment models are limited in what they measure and do not allow for comparisons between institutions on different dimensions of performance. As a result, the surrogate measure for student learning has been student retention and time to degree, using the five-year baccalaureate as the standard.

Federal policymakers also are showing signs of wanting to get into the quality and accountability game, potentially by linking federal financial aid to measures of academic performance. The federal government also could leverage academic-standards policy as part of its recognition standards for accrediting agencies. Any move by the feds in this area would represent a significant shift in the federal policy role in higher education—from a traditional focus on educational equity and economic development to a policy and standard-setting role. These issues are on the table as part of the negotiations for the next reauthorization of the Higher Education Act.

The shift away from self-regulation is not confined to higher education; witness the changes in the accounting and health-care professions. The language of goal-setting, assessment, and accountability also has been at the core of the reinventing government movement. Higher education is behind the curve in this arena, prompting some policymakers to conclude that colleges and universities are trying to avoid accountability. At the same time, many people within higher education worry about the portent of government-imposed testing models in the diverse American system of higher education. The fact that the heightened interest in assessment and accountability is occurring at the same time states are cutting budgets leads some to conclude that the accountability movement is just an excuse for disinvesting in higher education.

- **With the heightened interest in assessment and accountability, the traditional system of voluntary accreditation faces a stern challenge.**

Institutional competition for high-achieving students is more intense than ever. This has increased the value of consumer information about higher education. Faced with rising tuitions, students and parents want to be able to do the same kind of price and quality comparison shopping for a college that they are used to doing with other important financial decisions. For good or ill, they can't get this kind of information from accrediting agencies, which produce very little in the way of public information about quality. The result has been an increase in commercial quality-review and ratings services. Although institutional leaders regularly decry these ratings as methodologically and substantively weak, consumers and policymakers have become accustomed to seeing them.

These pressures mean that the historic mechanisms for quality assurance are not well positioned to meet the needs of the future. Whether the accreditation community can adapt to this demand for accountability is a key question. If it cannot, some other process, likely imposed by government, is likely to take its place.

Questions for Boards

- Have your faculty members fully explored existing methods for arriving at concrete measures of student-learning outcomes?
- Has your institution fully documented the contributions to local, state, and national economic activity made by your faculty and students?
- Has your institution evaluated the various institutional ranking systems and determined what approach is best for your own campus?

9. Scientific Research

Issue At a Glance

The scientific community faces challenges in the areas of maintaining balanced federal investments across all scientific disciplines, procedures for bringing research results to market, the ethics of cloning and stem-cell research, and the protection of human research subjects.

- Federal investments in scientific research will continue to be a high priority for some federal policymakers, with increasing attention to physical sciences and engineering in addition to the health and life sciences.
- Preservation of the Bayh-Dole Act—the federal law governing university technology transfer—will remain essential to ensuring that federally sponsored research results can be made available by universities to the private sector for product development.
- New congressional and administration policies designed to limit therapeutic cloning and stem-cell research are likely to present significant challenges to the advancement of some biomedical research.
- Universities will continue to improve their systems for protecting human participants in research, even as the government contemplates additional protections.

The unique partnership that exists between universities and the federal government in support of scientific research is highly productive. Federal agencies now provide more than $17 billion a year to university scientific researchers, an investment that expands human knowledge and helps educate the next generation of science and technology leaders. New discoveries from university-based scientific research also form the basis for many new products and processes that benefit the nation and its citizens and contribute to our economic health and national security. Many of the funding issues are pressing and politically charged.

• Federal investments in scientific research will continue to be a high priority for some federal policymakers, with increasing attention to physical sciences and engineering in addition to the health and life sciences.

Over the past five years, the federal government has significantly increased investment in important biomedical and life-science research supported by the National Institutes of Health (NIH), with relatively less funding for research agencies that support the physical sciences and engineering. The growing imbalance in the federal research portfolio has caused concern within the research community, especially because advances in the biomedical and health-related fields depend heavily upon advances in the physical sciences, engineering, and other non-life-science-related disciplines.

In 2002, the President's Committee of Advisers on Science and Technology (PCAST) transmitted a report to the president titled "Assessing the U.S. R&D Investment." It stated that while federal funding for the biomedical and life sciences supported by NIH has been strong, there is a need to increase the federal investment in agencies that support the National Science Foundation, NASA, the Department of Defense, and the Department of Energy. Specifically, the PCAST report recommends that "funding for the physical sciences and engineering...be adjusted upward to bring them collectively to parity with the life sciences."

Compared with the funding levels provided by Congress last year, President Bush's fiscal 2004 budget proposal provides minimal increases in health-related and non-health-related research areas. Given current budget deficits, it is hard to predict how Congress will respond.

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- **Preservation of the Bayh-Dole Act—the federal law governing university technology transfer—will remain essential to ensuring that federally sponsored research results can be made available by universities to the private sector for product development.**

The Bayh-Dole Act provides the uniform legal framework for commercializing innovation generated with federal funding in industry and academe. Approved by Congress in 1980, Bayh-Dole established a uniform government patent policy and allowed universities and other nonprofit organizations to retain title to federally funded inventions and to work with companies in bringing them to market. The law thus promoted technology transfer by creating incentives for university researchers to consider the practical applications of their discoveries and for universities to seek out companies to develop them.

By enabling corporations to negotiate exclusive licenses of promising technologies, Bayh-Dole encouraged increased commercial investment in the research, development, and manufacturing capabilities needed to bring new products based on university research to market. The law established a fair balance of rights and responsibilities that bind government, industry, and universities.

Potential changes to Bayh-Dole risk upsetting this balance: eliminating the government's "march-in rights" (the right to intervene if a company has not taken appropriate steps to commercialize licensed research); deleting the provision that requires manufacturing within the United States; and changing the statutory allocation of rights in favor of individual case-by-case negotiations. Although no specific legislation has been introduced to change Bayh-Dole, some in Congress have expressed interest in reviewing federal technology transfer policies. In response, a PCAST subcommittee recently released a draft report that reiterates the success of Bayh-Dole and states that "existing technology transfer legislation works and should not be altered."

- **New congressional and administration policies designed to limit therapeutic cloning and stem-cell research are likely to present significant challenges to the advancement of some biomedical research.**

A consensus exists in the scientific community that "human reproductive cloning" (an assisted reproductive technology that would be carried out with the goal of creating a human being) should not be pursued. However, the National Academy of Sciences (NAS) has concluded that "therapeutic cloning," which is aimed at the creation of embryonic stem cells for clinical and research purposes, *should* be allowed.

President Bush backs legislation to ban both reproductive and therapeutic cloning in humans, and the House has passed legislation codifying the bans on both procedures. During debate on the legislation in the House, researchers, patient advocates, and universities supported a bipartisan alternative that would have banned human reproductive cloning while allowing therapeutic cloning to proceed under strict safeguards, but this alternative failed.

A bill banning both human reproductive and therapeutic cloning passed the House in 2001 and then got stuck in the Senate. History seems likely to repeat itself because a slim Senate majority again appears to oppose a complete ban, favoring instead a ban only on human reproductive cloning while allowing research on therapeutic cloning to proceed. If, however, more "fringe" scientists claim to produce human clones and begin to produce evidence, the legislative environment in the Senate could change very quickly, and the House-passed bill could become law. If a broad ban on cloning were enacted, it would shut down promising avenues for research.

At the same time the human-cloning debate is playing out, NIH and universities must continue to adhere to President Bush's human embryonic stem-cell policy, announced on August 9, 2001. This policy allows federal funds to be used for research on human embryonic stem cells derived before (but not after) that date. One argument in favor of allowing publicly funded embryonic stem-cell research is that it allows for greater government oversight than if this research were to be undertaken solely by the private sector. So far, only nine embryonic stem-cell "lines" have become available, and given the restrictions and uncertainties involved, some university researchers have been wary of seeking government grants for embryonic stem-cell research.

While stem cells can be derived from adult cells, many researchers believe that the most versatile stem cells come from embryos because they are more capable of becoming mature cells with specialized functions and therefore possess greater potential for treating a wide variety of diseases. Although the president's policy makes several sources of embryonic stem cells available, research has not advanced as rapidly as many expected after the existence of these cells was discovered in 1998. Whether this research accelerates or continues to languish is hard to predict, but if progress does not accelerate, pressure will build for a less fettered policy.

- **Universities will continue to improve their systems for protecting human participants in research, even as the government contemplates additional protections.**

The tragic deaths of several participants in clinical research at leading academic health centers has energized the Department of Health and Human Services to increase its oversight, universities to improve their human research participant-protection systems, and Congress to consider passing more-detailed legislation. Whether Congress will move before universities will depend on whether universities adequately and quickly invest in additional systems for protecting their human research participants before another tragedy occurs.

Many institutions have expanded the number of institutional review boards they use to review proposed research protocols and to monitor existing research involving humans; some have expanded their research monitoring and oversight systems. Many also have sought voluntary accreditation for their human research participant systems, which provides some measure of public accountability beyond the institution's own testaments to the quality of its systems.

While universities have been improving their systems, the National Bioethics Advisory Commission and the Institute of Medicine have produced reports criticizing current practices and making recommendations for improvement. Some in Congress have expressed interest in enacting some of the recommendations. Whether Congress acts will depend in part on how completely and quickly universities demonstrate improvements to their systems. The number of universities that seek voluntary accreditation may be used as a proxy by Congress to determine whether, in fact, congressional action on this matter is required.

Questions for Boards

- Have your institution's research and academic affairs officials made plans to anticipate potential declines in the rate of growth in federal funding for the life sciences and minimal growth in funding for other disciplines?
- Has your institution used technology transfer to ensure that university research results are successfully transferred to the marketplace?
- Does your campus have a solid policy on human cloning and the use of stem cells that helps guide this important research and reassures the public and policymakers against ethical abuses?
- Has your institution's research oversight office reviewed its procedures for the protection of human subjects and sought voluntary accreditation of its human research participant system?

10. Intercollegiate Athletics

Issue At a Glance

As the public embraces college sports as entertainment, colleges and universities continue to confront issues of control, finances, and equity.

- The federal government is considering changes to regulations to Title IX, the law that governs gender equity in education institutions.
- Pursuit of better athletes, winning teams, and larger arenas has fueled an "arms race" and continuing scandals that call into question whether academic leaders can control big-time college sports.

For colleges and universities at all levels of athletics competition, maintaining high standards and integrity in academics remains difficult. An "arms race" has forced many institutions to spend millions of dollars on athletics facilities and personnel—money that otherwise might have been invested more prudently. Indeed, many institutions that have joined this arm's race have had difficulty justifying such expenditures in light of their academic missions. Higher education leaders agree that when the emphasis is on providing entertainment to the public at the expense of the student-athlete and the mission of the institution, the purpose of intercollegiate sports becomes distorted.

Among the challenges for higher education are (1) to reconcile the recruitment and participation of talented athletes with the reasonable academic expectations every institution will place on them and (2) to better control financial and governance issues. And while great strides have been made in women's programs under Title IX, there remains a good deal of ferment about the effects of this law.

• The federal government is considering changes to regulations to Title IX, the law that governs gender equity in education institutions.

Responding to complaints of those who say opportunities for men's participation in intercollegiate athletics has been compromised by unwieldy Title IX regulations, U.S. Secretary of Education Roderick Paige in 2002 launched a high-level commission to study whether those regulations need fixing. This February, the Commission on Opportunity in Athletics, having held six hearings, submitted 23 r ecommendations to Paige, who must decide whether the 1979 regulations should be altered.

The major bone of contention is a regulation commonly called the "Three-Part Test." This regulation says institutions meet the requirements of Title IX if they satisfy *one* of the following tests:

1. Each gender's representation in varsity athletics is substantially proportionate to its representation in the student body (thus, if one gender makes up 60 per cent of the student body, its representation among varsity athletes must be roughly the same percentage); *or*

2. the institution demonstrates a continuing practice responsive to the developing interests and abilities of the gender that has been underrepresented in intercollegiate athletics; *or*

3. if neither the first nor second parts of the test has been met, the institution must show that the interests and abilities of the underrepresented gender have been fully and effectively accommodated.

Boards should be aware that nine of the 12 federal appeals courts have accepted the applicability of the three-part test, and men who argue that their athletic opportunities have been reduced by adherence to the numerical requirements of Title IX have lost in at least five separate legal actions.

Boards should make certain that presidents and athletics directors have a specific understanding of the legal, policy, and public-relations aspects of Title IX, and they should be satisfied with these leaders' commitment to equitable treatment of male and female athletes. Boards should request a comprehensive status report on their institution's Title IX compliance and a risk assessment from the general counsel.

Paige has said he will "move forward only on those recommendations" that enjoyed the unanimous support of the commission. His decision could have far-reaching political and financial ramifications.

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• Pursuit of better athletes, winning teams, and larger arenas has fueled an "arms race" and continuing scandals that call into question whether academic leaders can control big-time college sports.

Presidents have long been viewed as key players in any successful reform of college sports, but recent athletics scandals leading up to the 2003 NCAA men's basketball tournament have called into question whether presidents will be able to deliver needed reforms. Nonetheless, the formalization of presidential authority and leadership is crucial as institutional leaders strive to address the difficult and varied challenges. Incoming NCAA President Myles Brand, a former college president himself, is looking to enact some significant reforms. For example, Brand wants college presidents to give the NCAA authority to reward and punish college teams based on the academic performance of their players.

College and university presidents, particularly those with large athletics programs, are hard pressed to go full-bore for reform. On the one hand, for example, presidents are told that they should be directly responsible for all aspects of running honest, fiscally sound, and educationally integrated athletics programs. They know, as well, that they must resist inappropriate interference from alumni, booster clubs, and trustees—even though this might conflict with their job security. On the other hand, these presidents are expected to hire coaches who produce teams that consistently win and to support expansion of athletics facilities that favorably compare with those of peer institutions. Such vexing issues reflect widespread, deep-seated, and conflicting cultural attitudes.

Although the second Knight Commission on Intercollegiate Athletics called on governing boards to work "in harness" with presidents to assume greater responsibility in the governance of athletics, few boards have actively monitored the reform movement, and no one has formally articulated the responsibilities of boards and trustees. This may be changing. Governing boards should expect an increase in athletics-related agenda items as well as a rise in the levels of controversy and difficulty.

Questions for Boards

- Are the levels of participation, financial aid, and support services for male and female athletes at your institution consistent with Title IX regulations?
- What level of risk can your board tolerate in Title IX compliance?
- Has your board declared the president responsible for intercollegiate athletics and affirmed its support for his or her leadership?
- Has your board articulated its oversight responsibilities for intercollegiate athletics? Are those responsibilities documented, understood, and accepted by all board members, as well as by the athletic department?

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